



PUBLIC NOTICE

Federal Communications Commission
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DA 03-2948
September 25, 2003

COMMISSION SEEKS COMMENT ON APPLICATIONS TO ASSIGN WIRELESS LICENSES FROM WORLDCOM, INC. (DEBTOR-IN-POSSESSION) TO NEXTEL SPECTRUM ACQUISITION CORP.

Pleading Cycle Established

WT Docket No. 03-203

Petitions/Comments Due: October 27, 2003
Oppositions/Replies Due: November 11, 2003

On August 15, 2003, subsidiaries of WorldCom, Inc. (debtor-in-possession)(collectively, "WorldCom D-I-P") and Nextel Spectrum Acquisition Corp. ("Nextel" and together with WorldCom D-I-P, the "Applicants") filed applications¹ pursuant to Section 310(d) of the Communications Act of 1934, as amended,² seeking Commission approval of the proposed assignment of Federal Communications Commission ("Commission") licenses from WorldCom D-I-P to Nextel.³

In 2002, WorldCom, Inc. and substantially all of its active U.S. subsidiaries filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code.⁴ The company filed the requisite applications for the involuntary assignment of all of its licenses, including the subject licenses, to itself as debtor-in-possession, and those applications have been granted.⁵ On

¹ FCC Files Nos. 20030818AAC, 20030826AAA, 0001398518, CAR-20030902AA-08, CAR-20030903AA-08 through CAR-20030903AN-08, 0001394749, and 0001397470. The applications are listed individually on pages 3 and 4 of this Public Notice. Because the Public Interest Statement submitted with each application is identical, any citation made herein to the "Applications" refers to the Public Interest Statement.

² 47 U.S.C. § 310(d).

³ The licenses are for the following services: Multipoint Distribution Service, Multichannel Multipoint Distribution Service and Instructional Television Fixed Service ("MDS/MMDS/ITFS"); Wireless Communications Service ("WCS"); Private Operational-Fixed Microwave Service and Point-to-Point Common Carrier Microwave Service (together, "Fixed Microwave"); Private Land Mobile Radio Service ("PLMR"); and Cable Antenna Relay Service ("CARS").

⁴ *In re WorldCom, Inc.*, et al., Chap. 11 Case No. 02-13533 (Bankr. S.D.N.Y. 2002).

⁵ *See, e.g.*, Wireless Telecommunications Bureau Grants Applications for Assignment of Licenses to WorldCom, Inc. and its Subsidiaries as Debtors in Possession, *Public Notice*, DA 02-3350 (WTB rel. Dec. 5, 2002) (granting the assignment applications covering the wireless licenses other than the CARS licenses).

June 13, 2003, WorldCom D-I-P filed applications seeking Commission approval for the assignment or transfer of control of the licenses and authorizations to MCI, Inc. to consummate the transaction proposed in its Plan of Reorganization before the Bankruptcy Court. The Commission established a pleading cycle for comment on those still-pending applications in WC Docket No. 02-215.⁶

On June 26 and 27, 2003, and pursuant to Bankruptcy Court approval, WorldCom D-I-P conducted an auction to sell certain wireless assets to the party submitting the highest and best offer.⁷ WorldCom D-I-P would also convey to the winning bidder its interest in the underlying licenses, subject to Commission approval of the required assignment applications. Nextel, a wholly-owned subsidiary of Nextel Communications, Inc., submitted the highest and best offer.⁸ On July 8, 2003, WorldCom D-I-P and Nextel entered into an Asset Purchase Agreement for the sale of the assets to Nextel for \$144 million in cash and non-cash consideration.⁹ On July 22, 2003, the Bankruptcy Court approved the Asset Purchase Agreement, as modified in certain respects.¹⁰ The instant assignment applications seek Commission approval to consummate the transaction described in the Bankruptcy Court-approved Asset Purchase Agreement.¹¹

⁶ See Commission Seeks Comment on Applications for Consent to Assign and/or Transfer Control of Licenses and Authorizations Filed by WorldCom, Inc. (Debtor-in-Possession) and MCI, Inc., *Public Notice*, DA 03-2193 (WCB rel. July 9, 2003) (*July Public Notice*). We anticipated in the *July Public Notice* that WorldCom D-I-P and Nextel would file the instant applications, and that if the instant applications were approved and consummated prior to the applications covered by the *July Public Notice*, the licenses so assigned would be removed via amendment from the applications covered by the *July Public Notice*. See *July Public Notice* at 5 n.12. If the applications covered by the *July Public Notice* are approved and consummated prior to the instant applications, we would expect the parties to amend the instant applications to substitute MCI, Inc. as the assignor.

⁷ Applications at 3.

⁸ *Id.*

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.* We note that assignment applications for some of the FCC licenses subject to the Asset Purchase Agreement (e.g., the receive-only earth stations held by WorldCom Broadband Solutions, Inc. (debtor-in-possession)), have not been filed as of this date. In the case of receive-only earth stations, our procedures do not require the filing of transfer or assignment applications, but instead require that the Applicants report the changes in station operator on FCC Form 312 and Schedule A. These changes are then published in the International Bureau's routine Actions Taken public notices and recorded in the Bureau's appropriate data base. See *Deregulation of Domestic Receive-Only Satellite Earth Stations, Second Report and Order*, FCC 86-133, 104 FCC 2d 348, 353 (1986); Amendment of Part 25 of the Commission's Rules and Regulations, *First Report and Order*, FCC 91-136, 6 FCC Rcd 2806, 2812 (1991); New Rules for Part 25 – Satellite Communications, *Public Notice*, DA 91-763, Report No. DS-1097, 6 FCC Rcd 3738 (1991); and Implementation of New Part 25 Regulations, *Public Notice*, DA 97-1967, Report No. SPB-104, 12 FCC Rcd 13850, 13852 (1997). Thus, if the proposed transaction before us is ultimately approved, we expect the Applicants will report changes in the ownership of the receive-only earth stations listed in Schedule 2.02(iv) of the Asset Purchase Agreement, as we view these receive-only earth stations within the scope of the transaction now under review. See Applications, Exhibit II.6, at p. 24 (Section 5.11, referring to Schedule 2.02(iv)).

The Applicants assert that grant of the instant applications would comply fully with the Commission's Rules and would serve the public interest by enhancing Nextel's ability to offer new digital wireless services to the public.¹² According to the Applicants, Nextel's expertise in developing and providing innovative wireless services in previously underutilized spectrum will be applied to the MDS/MMDS spectrum and the other spectrum it would acquire under the terms of the proposed transaction, furthering the Commission's goals of maximizing efficient use of the spectrum resource and promoting competition.¹³ The Applicants further state that the proposed assignments would not have anticompetitive effects because WorldCom D-I-P and Nextel compete in different product markets.¹⁴

The applications covered by this Public Notice are as follows:¹⁵

Parts 21 and 74 – MDS/MMDS/ITFS

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
20030818AAC	WorldCom Broadband Solutions, Inc.	B036
20030826AAA ¹⁶	CS Wireless Systems, Inc.	B028

Part 27 – WCS

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001398518	WorldCom Broadband Solutions, Inc.	KNLB205

Part 87 – CARS

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
CAR-20030902AA-08	Wireless Video Enterprises, Inc.	WLY-681
CAR-20030903AA-08	WorldCom Broadband Solutions, Inc.	WLY-457
CAR-20030903AB-08	WorldCom Broadband Solutions, Inc.	WLY-458
CAR-20030903AC-08	WorldCom Broadband Solutions, Inc.	WLY-459
CAR-20030903AD-08	WorldCom Broadband Solutions, Inc.	WLY-485
CAR-20030903AE-08	WorldCom Broadband Solutions, Inc.	WLY-545
CAR-20030903AF-08	WorldCom Broadband Solutions, Inc.	WLY-546
CAR-20030903AG-08	WorldCom Broadband Solutions, Inc.	WLY-560
CAR-20030903AH-08	WorldCom Broadband Solutions, Inc.	WLY-561
CAR-20030903AI-08	WorldCom Broadband Solutions, Inc.	WLY-569
CAR-20030903AJ-08	WorldCom Broadband Solutions, Inc.	WLY-570
CAR-20030903AK-08	WorldCom Broadband Solutions, Inc.	WLY-576
CAR-20030903AL-08	WorldCom Broadband Solutions, Inc.	WLY-577
CAR-20030903AM-08	WorldCom Broadband Solutions, Inc.	WLY-712
CAR-20030903AN-08	WorldCom Broadband Solutions, Inc.	WLY-721

¹² *Id.* at 4-5.

¹³ *Id.*

¹⁴ *Id.* at 5-6. The Applicants state that WorldCom offers fixed wireless broadband data services to small and medium-sized businesses on a non-common carrier basis, while Nextel offers Commercial Mobile Radio Services (CMRS). *Id.* at 6. The Applicants add that, in any event, the Commission has previously determined that there is effective competition in the CMRS marketplace. *Id.*

¹⁵ The “(debtor-in-possession)” appellation is omitted from the list of licensees.

¹⁶ This application was refiled on August 25, 2003.

Part 90 – PLMR

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0001394749	WorldCom Broadband Solutions, Inc.	WPIZ584

Part 101 – Fixed Microwave¹⁷

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001397470	WorldCom Broadband Solutions, Inc.	WLA870

The assignment applications identified herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of the applications if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Final action will not be taken on the applications earlier than thirty-one days following the date of this Public Notice.¹⁸

Pursuant to 47 C.F.R. § 1.1200(a), which permits the Commission to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires, we announce that this proceeding will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206.

All filings concerning any or all matters in this Public Notice should refer to WT Docket No. 03-203. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file petitions to deny or comments on or before October 27, 2003 and oppositions or reply comments on or before November 11, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Persons and entities that file comments will have those comments considered but do not become parties to the proceeding and may not be able to participate as fully as petitioners.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in that caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent.

¹⁷ We note that there is also one PLMR license on this application, WPET578.

¹⁸ *See* 47 U.S.C. § 309(b).

The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings, as well as filings on electronic media, for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. The Commission advises that filings on electronic media should not be sent through the United States Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893
- (2) Jeffrey Tobias, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 2-C828, Washington, D.C. 20554; e-mail: Jeff.Tobias@fcc.gov.
- (3) Erin McGrath, Commercial Wireless Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: Erin.McGrath@fcc.gov.
- (4) Wayne McKee, Engineering Division, Media Bureau, 445 12th Street, S.W., Room 4-C737, Washington, D.C. 20554; e-mail: Wayne.McKee@fcc.gov.
- (5) Ann Bushmiller, Transaction Team, Office of General Counsel, 445 12th Street, S.W., Room 8-A831, Washington, D.C. 20554; e-mail: Ann.Bushmiller@fcc.gov.

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's Electronic Comment Filing System (ECFS), which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

For further information, contact Jeffrey Tobias, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418-1617 (re applications to assign MDS/MMDS/ITFS, PLMR, and Fixed Microwave licenses); Erin McGrath, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-2042 (re applications to assign WCS licenses); or Wayne McKee, Engineering Division, Media Bureau, at (202) 418-2355 (re applications to assign CARS licenses).

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